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09/446,395	12/22/1999	ULLA OLOFSSON	000515-175	2263

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT

PAPER NUMBER

3761

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118

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/446,395

Applicant(s)

OLOFSSON ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 6-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gryskiewiez et al. (5,901,851) in view of Langdon (5,368,910).

With respect to claims 1, 4, 8, 12-17, and 19, Gryskiewiez discloses the use of an absorbent article such as an incontinence product, diaper, and sanitary napkin (column 1, lines 18-20) with an absorbent body 52 enclosed between a liquid impermeable cover sheet 40 and a liquid permeable cover sheet 54, as shown in figure 1. The liquid permeable cover sheet 54 comprises a first material of a bicomponent fiber comprising a polyethylene sheath and a polyester core, as disclosed in column 9, lines 8-12. The liquid permeable cover sheet 54 may be treated with to increase its hydrophilicity, as disclosed in column 9, lines 6-8.

Gryskiewiez discloses treating the liquid permeable cover sheet to increase its hydrophilicity, but remains silent as to the type of surfactant used to treat the cover sheet. Langdon discloses treating a liquid permeable cover sheet with plasma to increase the hydrophilicity of the cover sheet, as disclosed in column 8, lines 39-42. It would have been obvious to one of ordinary skill in the art at the time of invention to treat the liquid permeable cover sheet of Gryskiewiez with plasma, as taught by

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Langdon, to increase hydrophilicity without leaving a surfactant residue on the surface of the fibers, as disclosed by Langdon in column 8, lines 42-43.

The liquid permeable cover sheet of Gryskiewiez, as modified by Langdon, comprises the same materials, and therefore the same chemical makeup, of the instant invention. The liquid permeable cover sheet of Gryskiewiez, as modified by Langdon, therefore inherently has an oxygen/carbon ratio of greater than or equal to 0.23.

With respect to claim 2, Gryskiewiez discloses, in column 9, lines 1-13, the first material being a nonwoven material comprising fibers having a polyethylene sheath.

With respect to claim 3, Gryskiewiez discloses the claimed invention with the exception of polypropylene as the core material of the bicomponent fibers. Langdon discloses, in column 6, lines 25-59, polypropylene being equivalent to polyester. Therefore, because the two polyolefins are art-recognized equivalents, one of ordinary skill in the art would have found it obvious to substitute polypropylene for polyester in the core of a bicomponent fiber.

With respect to claims 6, 7, and 9, Gryskiewiez discloses a second material layer 44 comprising a nonwoven layer of polypropylene, as described in column 7, lines 5-12.

With respect to claim 10, see figure 3.

With respect to claim 11, see Gryskiewiez, column 11, lines 28-39.

With respect to claim 18, metallocene is used as a catalyst in the polymerization of certain polyolefins, and therefore metallocene-catalyzed refers to a process used to polymerize the polyethylene. The limitation of the polyethylene being a metallocene-catalyzed polyethylene is considered a Product-by-Process limitation and these

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limitations are not limited to the manipulations of steps, only the end structure implied by these steps (see MPEP 2113). It follows that if the product in the claim with the product-by-process limitation is the same as the product of the prior art, the claim is unpatentable even if the prior art product was made by a different process. The polyethylene being a metallocene-catalyzed polyethylene is therefore anticipated by Gryskiewicz and Langdon.

Claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Gryskiewicz et al. (5,901,851) in view of Langdon (5,368,910) as applied to claim 1 above, and further in view of Thomas et al. (4,351,784).

Gryskiewicz fails to disclose the liquid permeable cover sheet being a perforated plastic film. Thomas teaches the use of a corona treated perforated thermoplastic film (see Abstract). It would have been obvious to one of ordinary skill in the art at the time of invention to construct the liquid permeable cover sheet of Gryskiewicz from a perforated thermoplastic film, as taught by Thomas, in order to provide an increased liquid flow rate through the material (see Abstract).

### ***Response to Arguments***

Applicant's arguments filed 13 June 2003 have been fully considered but they are not persuasive. Gryskiewicz discloses a liquid permeable cover sheet 54 that surrounds an absorbent body 52, as shown in figure 1. While Gryskiewicz describes the liquid permeable cover sheet 54 as a 'support layer' the sheet is intended to come in contact with the skin of a wearer, as disclosed in column 8, lines 65-67, and surrounds

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an absorbent body 52, as disclosed in column 8, lines 47-48. The liquid permeable cover sheet 54 fulfills all limitations of the instant claim.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Gryskiewicz teaches the treatment of a liquid permeable cover sheet to be hydrophilic, and Langdon teaches a method of treating a liquid permeable cover sheet to be hydrophilic.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The liquid permeable cover sheet of Gryskiewicz, as modified by Langdon, comprises the same materials, and therefore the same chemical makeup, of the instant

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invention. The liquid permeable cover sheet of Gryskiewiez, as modified by Langdon, therefore inherently has an oxygen/carbon ratio of greater than or equal to 0.23.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

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*CWA*

cla

September 3, 2003



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